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Arizona Corporation Commission

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, LLC, DBA
JOHNSON UTILITIES COMPANY FOR AN
INCREASE IN ITS WATER AND
WASTEWATER RATES FOR CUSTOMERS
WITHIN PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

**JOHNSON UTILITIES, LLC'S
RESPONSE AND MOTION TO
STRIKE INTERVENOR SWING
FIRST GOLF'S NOTICE OF
INAPPROPRIATE DISCOVERY
AND LITIGATION TACTICS**

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On February 20, 2009, Intervenor Swing First Golf, LLC, ("SFG") filed with the Arizona Corporation Commission ("Commission") a Notice of Inappropriate Discovery and Litigation Tactics ("Notice") in both this rate case docket (the "Rate Case Docket") and the complaint docket (the "Complaint Docket")¹ involving SFG and Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson Utilities" or the "Company"). However, as will be shown herein, neither Johnson Utilities nor its legal counsel has engaged in inappropriate discovery or litigation tactics in the Rate Case Docket or the Complaint Docket. Moreover, because the self-serving Notice specifically states that SFG is not asking the Commission to take any specific action with regard to the Company's alleged discovery abuse and litigation tactics, the Notice is an improper filing that should be stricken.² As the Complaint Docket is a separate docket, Johnson Utilities will not

¹ Docket No. WS-02987A-08-0049.

² The Notice states: "In this pleading, Swing First is not asking the Commission to take any specific actions to deal with Utility's discovery and procedural abuse. In the rate-case docket, the Commission will have a full opportunity to deal with Utility." Notice at Page 11, Lines 18-21.

1 address in this response the allegations of SFG set out in Section II of the Notice
2 pertaining to the Complaint Docket but will address those allegations in a separate
3 response filed in the Complaint Docket.

4 1. **JOHNSON UTILITIES HAS PROVIDED SFG WITH THOUSANDS**
5 **OF PAGES OF DISCOVERY RESPONSIVE TO DATA REQUESTS**
6 **FROM STAFF AND RUCO.**

7 So far in the Rate Case Docket, Johnson Utilities has responded to twelve sets of
8 data requests from Utilities Division Staff ("Staff") and three sets of data requests from
9 the Residential Utility Consumers Office ("RUCO"). In total, Johnson Utilities has
10 responded to over 170 data requests (not including subparts) from these two parties. The
11 Company's responses to the data requests fill 23 binders and comprise more than 7,600
12 pages. The data requests propounded by Staff and RUCO include the standard Staff and
13 RUCO data requests in rate case proceedings plus additional data requests specifically
14 addressed to the facts of this Rate Case Docket.

15 In its Data Request 2.8 (from SFG's second set), SFG asks for "all other data
16 requests from, and responses to, Commission Staff or any other party in this case.
17 Pursuant to SFG's request, Johnson Utilities provided SFG with all of the responses to
18 Staff and RUCO described above—some 7,600+ pages. SFG's allegation in the Notice
19 that Johnson Utilities is "burying them with paper"³ is a deceptive platitude. As counsel
20 for SFG is well aware, rate cases necessarily generate significant paper, particularly
21 during discovery. SFG voluntarily elected to intervene in the Rate Case Docket and
22 participate as a party. Dealing with the paper generated by data requests is an unavoidable
23 reality of rate cases.

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26 ³ Notice at page 1, line 5.

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2. **JOHNSON UTILITIES HAS RESPONDED TO SFG'S DATA REQUESTS.**

In the Rate Case Docket, Johnson Utilities has received five sets of data requests from SFG and has responded in good faith to four sets. Responses to the fifth set will be provided shortly. With regard to certain of the data requests, Johnson Utilities raised objections. As discussed in the following section, the Commission's Administrative Law Judge has ruled on all contested objections. Thus, with the exception of the fifth set of data requests which is pending, Johnson Utilities has responded to all other data requests.

3. **TIMING OF DISCOVERY RESPONSES; MOTION TO COMPEL.**

Although SFG accuses Johnson Utilities of employing bad-faith tactics to fend off discovery,⁴ the facts in this Rate Case Docket are otherwise. SFG states that Johnson Utilities' responses to SFG's first three sets of data requests were not provided on a timely basis. Johnson Utilities acknowledges that the standard time period for submitting responses to data requests was not strictly followed earlier in the Rate Case Docket. This was due, in part, to the fact that Johnson Utilities and SFG were discussing settlement of the Complaint Docket in August and September 2008, and for a time, it appeared that the Complaint Docket might be settled.⁵ It should also be noted that while the Company's responses were delayed, (i) SFG received responses to its first set of data requests 139 days before the February 4, 2009, deadline for pre-filing its testimony, (ii) SFG received responses to its second set of data requests 110 days prior to its testimony filing deadline, and (iii) SFG received responses to its third set of data requests 105 days prior to the testimony filing deadline. By comparison, Johnson Utilities has still not received responses to its first and second sets of data requests to SFG in the Rate Case Docket and

⁴ Notice at page 1, lines 11- 14.

⁵ As evidence of this, in an October 7, 2008, e-mail from SFG's counsel responding to an inquiry from Staff attorney Robin Mitchell about the status of the complaint between SFG and Johnson Utilities, SFG's counsel states that "I thought we would get a settlement, but it didn't work out."

1 it is only eight days away from the Company's March 6, 2009, deadline for filing its
2 rebuttal testimony to the Direct Testimony of David Ashton.

3 SFG also argues that as further evidence of alleged bad faith, it was required to file
4 a Motion to Compel ("SFG Motion to Compel") on November 21, 2008, with regard to 15
5 objections raised by Johnson Utilities to SFG data requests. Again, however, the facts
6 prove otherwise. In her ruling on the SFG Motion to Compel, the Administrative Law
7 Judge ("ALJ") ruled in Johnson Utilities' favor on 9 out of 15 objections, and the
8 Company was not required to provide the requested information. On two other
9 objections, SFG was required to resend a different data request in order to obtain the
10 information. On two other data requests, the ALJ required Johnson Utilities to provide
11 some but not all of the information requested. In the end, SFG prevailed outright on only
12 two of the 15 objections raised by Johnson Utilities. A table showing the results of the
13 SFG Motion to Compel is attached hereto as Attachment A. These results show that
14 Johnson Utilities raises objections where it has a good faith basis for the objection.

15 **4. SFG DATA REQUEST 1.1 IN THE RATE CASE DOCKET.**

16 In its Notice, SFG raises specific examples from the Rate Case Docket which it
17 alleges show bad faith by Johnson Utilities. The first such example is SFG Data Request
18 1.1, which states as follows:

19 For each month during the period 2005 to the present, please provide by
20 treatment facility the amount of treated effluent generated within Utility's
Certificate of Convenience and Necessity ("CC&N").

21 As an initial matter that must be addressed, SFG erroneously states in its Notice
22 that this data request was issued in the Complaint Docket when, in fact, it was issued in
23 the Rate Case Docket.⁶ This is a significant misrepresentation⁷ by SFG because Data

24 _____
25 ⁶ Notice at page 3.

26 ⁷ Johnson Utilities does not know whether this misrepresentation was intentional or inadvertent, but at a minimum, it demonstrates the fact that counsel for SFG is unable or unwilling to maintain a distinction between the Complaint Case and the Rate Case Docket. Johnson Utilities believes the reason for this is obvious—SFG's participation in the

1 Request 1.1 in the Complaint Docket was issued April 11, 2008, while Data Request 1.1
2 in the Rate Case Docket was issued four months later on August 8, 2008. Thus, when
3 Johnson Utilities responded to this data request with an objection on September 18, 2008,
4 the response was not six months after the date of the data request as alleged by SFG but
5 41 days, a significant difference.⁸ As set forth above, Johnson Utilities and SFG were in
6 settlement discussions during August and September 2008 and the standard response time
7 for data requests was not strictly followed. Johnson Utilities raises this misrepresentation
8 regarding the date of Data Request 1.1 because it is illustrative of the way in which SFG
9 contorts its story to try to show bad faith where none exists.

10 Johnson Utilities responded to Data Request 1.1 in the Rate Case Docket on
11 September 18, 2008, with the following objection:

12 Objection. The information requested is reported by Johnson Utilities on
13 "Self Monitoring Reports" filed with ADEQ on a quarterly basis for each
14 water reclamation plant operated by Johnson Utilities. This information is
a matter of public record and can be readily obtained from ADEQ.

15 A copy of the response is attached hereto as Attachment B. After raising the objection,
16 counsel for Johnson Utilities and counsel for SFG had discussions regarding the data
17 request. In those discussions, counsel for SFG asked Johnson Utilities to provide the Self
18 Monitoring Report Forms ("SMRFs") notwithstanding the fact that they could be obtained
19 publicly from the Arizona Department of Environmental Quality ("ADEQ") because it
20 would be difficult for SFG to obtain the information from ADEQ. As an accommodation
21 of SFG's request, Johnson Utilities provided a revised response to Data Request 1.1 on
22 October 17, 2008, in which the Company attached copies of SMRFs for the Santan Water
23 Reclamation Plant for the test year 2007. A copy of the revised response to Data Request
24 1.1 (less the attachments) is attached as Attachment C.

25 Rate Case Docket is for the sole purpose of creating leverage to force Johnson Utilities to capitulate to SFG's
26 demands in the Complaint Case.

⁸ Notice at page 3, lines 1-2.

1 SFG argues in its Notice that Johnson Utilities "finally provided data for just one
2 year (2007) and for just one plant (the Santan Water Reclamation Plant)."⁹ However, this
3 is exactly what Johnson Utilities said it was providing in its revised response to Data
4 Request 1.1 on October 17, 2008. When SFG filed its Motion to Compel a little more
5 than one month later, it made no mention of the revised response. Thus, Johnson Utilities
6 believed—and rightly so—that SFG was satisfied and the matter was resolved.

7 The issue of Data Request 1.1 did not surface again until February 6, 2009, when
8 counsel for SFG sent counsel undersigned an e-mail which stated: "I was going through
9 Johnson Utilities' Revised Response to Swing First's DR 1.1 this morning." Based on this
10 e-mail, a copy of which is attached hereto as page 2 of Attachment D, it is clear that SFG's
11 counsel did not even look at the revised response to Data Request 1.1 until nearly four
12 months after receiving the response. In any event, SFG's counsel raised the following
13 objection in the e-mail:

14 The attachment provided by Mr. Tompsett was approximately 220 pages
15 long, with the relevant information actually contained on just four pages.
16 In less time than it took to copy this huge non-responsive attachment, utility
17 could have pulled the relevant data off these four pages (quarterly reports of
18 average daily flows) and included it directly in the response. Arguably, the
19 12 daily reports of effluent flows were also responsive. However, the
20 balance of the response was irrelevant. Further, this revised response only
21 came after I challenged the first attempt to provide me nothing at all.

22 There are several serious inaccuracies with this statement and with SFG's
23 assertions in its Notice. First, the SMRFs that were attached to the revised response (*i.e.*,
24 all quarterly SMRFs for the Santan wastewater treatment plant for the test year 2007)
25 were directly responsive to SFG's question which asked "[f]or each month ... the amount
26 of treated effluent generated." There is no request in Data Request 1.1 that Johnson
Utilities limit its response to "quarterly reports of average daily flows." Certainly, there is

⁹ Notice at page 3, lines 8-10.

1 no request in the data request that Johnson Utilities limit its response to material that
2 Johnson Utilities believes is relevant. Apparently, what SFG wanted was only the
3 monthly average flow sheets from the quarterly SMRFs, but that was not clear to Johnson
4 Utilities from a reading of the data request. In any event, it could take no longer than five
5 or ten minutes to identify the monthly average flow sheets from the 220 pages of quarterly
6 reports provided.

7 Second, SFG ignores the important fact that the 220 pages of SMRFs were also
8 responsive to SFG's Data Request 1.10 in the Rate Case Docket, which asked the
9 following:

10 Please provide copies of all reports provided during the period of 2005 to
11 the present by Utility to the Arizona Department of Environmental Quality
12 ("ADEQ") or the Arizona Department of Water Resources ("ADWR")
13 concerning the quality or quantity of treated effluent produced. (emphasis
14 added)

15 A copy of Johnson Utilities' revised response to Data Request 1.10 is attached
16 hereto as Attachment E. SFG asked for all reports provided to ADEQ concerning quality
17 or quantity of treated effluent produced. Just like its response to Data Request 1.1,
18 Johnson Utilities limited its revised response to Data Request 1.10 (October 17, 2008) to
19 reports provided during the test year for the Santan wastewater treatment plant, and just
20 like Data Request 1.1, SFG accepted the revised response to Data Request 1.10 and did
21 not raise any issue regarding the response in its Motion to Compel. All 220 pages of
22 SMRFs were directly responsive to Data Request 1.10. In fact, had Johnson Utilities
23 provided less than the 220 pages, it would not have been responsive to the data request.
24 Thus, SFG's statement that the SMRFs provided were non-responsive and irrelevant is
25 completely untrue.

26 Third, SFG stretches credibility to argue that by providing the 220 pages that make
up the four quarterly SMRFs for the Santan wastewater treatment plant is "burying" SFG

1 with paper.¹⁰ The fact is that the 220 pages represent less than 3% of the 7,600+ pages of
2 Staff and RUCO data responses that SFG requested and received from Johnson Utilities.
3 Moreover, it is apparent that counsel for SFG does not read responses to data requests
4 until months later, which short-circuits the normal follow-up that is common in the
5 discovery process difficult. Johnson Utilities has not acted in bad faith with respect to its
6 response to Data Request 1.1. To the contrary, the facts show that the Company has acted
7 with reasonableness, thoroughness and good faith.

8 **5. SFG DATA REQUESTS 3.2 AND 3.3 IN THE COMPLAINT**
9 **DOCKET.**

10 In its Notice, SFG states that it "attempted to follow-up DR 1-1 with DR 3-2."¹¹
11 One immediate problem with this statement is that Data Request 1.1 was issued in the
12 Rate Case Docket while Data Request 3.2 was issued in the Complaint Docket. Likewise,
13 Data Request 3.3 that is discussed in SFG's Notice was also issued in the Complaint
14 Docket. The on-going intermingling of the Complaint Docket and the Rate Case Docket
15 by SFG has made both cases more difficult. In any event, Johnson Utilities will address
16 herein the issues raised by SFG with regard to Data Requests 3.1 and 3.3 even though they
17 were issued in the Complaint Docket because they purportedly follow-up Data Request
18 1.1 in the Rate Case Docket.

19 Data Request 3.2 in the Complaint Docket asked Johnson Utilities to confirm that
20 (i) SFG had taken the correct 2007 average monthly flows (measured in millions of gallon
21 per day) from the SMRFs for the Santan wastewater treatment plant and (ii) SFG had
22 correctly multiplied the average monthly flows by the number of days in each month to
23 obtain a monthly total. SFG further asked that Johnson Utilities correct the table that
24 contained the data in the event that the Company disagreed with any of the figures. In its

25 ¹⁰ Notice at page 3, lines 13-14.

26 ¹¹ *Id.* at line 15.

1 response to Data Request 3.2 provided on February 18, 2009, Johnson Utilities asserted
2 the following objection:

3 The Self Monitoring Report Forms which SFG used to prepare the included
4 table speak for themselves. Utility is not required to verify SFG's work
product for accuracy.

5 Johnson Utilities stands by this good faith objection and believes that it is
6 appropriate. Moreover, SFG filed a motion to compel in the Complaint Docket on
7 February 6, 2009. If SFG believed it had a *bona fide* basis to contest the Company's
8 objection, then it could have amended its motion to compel to add Data Request 3.2.

9 Data Request 3.3 in the Complaint Docket requested the following:

10 Please provide the average daily reclaimed water flows from Utility's
11 Santan Water Reclamation Plant for the months of December 2004 through
12 December 2006, and January 2008 through the present. If Utility alleges
13 that it would be burdensome to provide this data directly, then provide the
14 relevant pages from the ADEQ Self Monitoring Reports for the years in
question. For example, the data in the table above was taken from the four
15 quarterly summaries of reclaimed water included in Utility's revised
16 response to Data Request 1.1. (emphasis in original).

17 In its response to Data Request 3.3, Johnson Utilities provided one page from each
18 of seven "Daily Monitoring/QUARTERLY" SMRFs (seven pages total) which identified
19 daily flows at the Santan wastewater treatment plant. The other option was for Johnson
20 Utilities to provide "monthly average flow" in millions of gallons per day from the
21 "Monthly Monitoring/QUARTERLY" SMRFs. In an e-mail from SFG's counsel to
22 Johnson Utilities' counsel dated February 18, 2009, SFG's counsel raised an issue
23 regarding the information providing, stating that "[i]nstead of providing the quarterly
24 summaries as requested, you chose to provide just the daily reports." Upon receiving this
25 information and clarification from SFG's counsel, Johnson Utilities provided the
26 "Monthly Monitoring/QUARTERLY" SMRFs for the Santan Wastewater Treatment Plant
for the period requested in an e-mail dated February 20, 2009.

1 Johnson Utilities believed in good faith that it responded with the relevant
2 information as requested with the initial response. Certainly, SFG could have clarified its
3 initial request by specifying that it wanted the "Monthly Monitoring/QUARTERLY"
4 SMRFs for the period in question. In any event, Johnson Utilities immediately provided
5 the information to SFG after receiving the clarifying e-mail from SFG's counsel on
6 February 18, 2009.

7 SFG raises an additional issue regarding the response to Data Request 3.3 in the
8 Complaint Docket. In the February 18, 2009, e-mail from SFG's counsel referenced
9 above, SFG requests asks the following clarifying question:

10 Utility's response to DR 1-3 [Rate Case Docket] shows effluent sales in
11 March of 2006, but today's 3-3 response [Complaint Docket] claims that
12 the San Tan Plant was not operational until April 2006. Please reconcile
this contradiction.

13 In his February 20, 2009, e-mail to SFG's counsel, Johnson Utilities' counsel
14 provided the following clarifying response:

15 As you point out, the statement in Johnson Utilities' response to Data
16 Request 3.3 that the Santan Wastewater Treatment Plant ("Santan WWTP")
17 was not operating prior to April 1, 2006, requires some additional
18 explanation. The initial start-up of the Santan WWTP occurred in March
19 2006. During that month, the plant did not operate continuously, which is
20 typical during the start-up period of a new wastewater treatment plant.
21 April 2006 was the first month that the plant was operating at normal
22 capacity, and April 2006 is the first month that Johnson Utilities began
reporting data for the Santan WWTP on self monitoring report forms. As
you can see from the spreadsheet attached to the response to Data Request
3.1, Johnson Utilities delivered 11,886,000 gallons of effluent in March
2006.

23 Johnson Utilities responded promptly to SFG with information clarifying the
24 apparent contradiction identified by SFG's counsel. Johnson Utilities believes that its
25 initial response to Data Request 3.3 was provided in good faith, and it believes that its
26 prompt response clarifying its earlier answer shows its good faith.

1 **6. JOHNSON UTILITIES HAS RESPONDED TO DATA REQUEST 1.3.**

2 SFG asserts in its Notice that Johnson Utilities failed to adequately respond to Data
3 Request 1.3 in the Rate Case Docket as directed by the ALJ in her ruling on the SFG
4 Motion to Compel. However, Johnson Utilities provided an initial response to the data
5 request on February 10, 2009. The initial response was not complete, and the Company
6 supplemented the response with an updated spreadsheet on February 23, 2009. Johnson
7 Utilities has fully responded to Data Request 1.3.

8 **7. FEBRUARY 9 LETTER.**

9 In its Notice, SFG objects to a letter dated February 9, 2009, (the "February 9
10 Letter") from George Johnson of Johnson Utilities to members of SFG. The February 9
11 Letter was fully addressed in the Response of Johnson Utilities to Emergency Motion to
12 Prohibit Inappropriate Contact filed in this Rate Case Docket on February 24, 2009. The
13 Company hereby incorporates its February 24, 2009, filing by this reference.

14 **8. DEPOSITIONS.**

15 Johnson Utilities does not intend to depose any person or party in the Rate Case
16 Docket. Johnson Utilities has noticed two depositions in the Complaint Docket—David
17 Ashton and Michael White, a former employee of SFG. Johnson Utilities has addressed
18 the issue of deposition in the Response of Johnson Utilities to Emergency Motion to
19 Prohibit Inappropriate Contact filed on February 24, 2009, in this Rate Case Docket.
20 Moreover, SFG states in its Notice that it intends to file a motion to quash the two notices
21 of deposition. Thus, the issue regarding depositions will be addressed in the Complaint
22 Docket, where the issue should be addressed, and need not be addressed in this Rate Case
23 Docket.

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1 **9. SFG HAS FAILED TO RESPOND TO JOHNSON UTILITIES' FIRST**
2 **AND SECOND SETS OF REQUESTS TO SFG.**

3 Johnson Utilities has issued two sets of data requests to SFG in this Rate Case
4 Docket. The First Set of Data Requests dated January 27, 2009, was comprised of 11
5 questions (exclusive of subparts) related to statements made in SFG's Motion to Compel
6 filed November 21, 2008. The Second Set of Data Requests dated February 6, 2009, was
7 comprised of 55 questions (exclusive of subparts), the great majority of which were in
8 direct response (citing page and line number) to the Direct Testimony of David Ashton
9 filed on February 3, 2009. Johnson Utilities did not delay in issuing these data requests,
10 which were issued just three days after the filing of Mr. Ashton's testimony. SFG has
11 raised no objection to any of the data requests (either first or second set). Now, in its
12 Notice, SFG states that it will "do its best" to provide responses to Johnson Utilities first
13 set of data requests by "approximately" February 27, 2009, and responses to Johnson
14 Utilities' second set of data requests by the week of March 6, 2009, which is at least three
15 days after Johnson Utilities' rebuttal testimony is due in the Rate Case Docket.
16 Obviously, this is completely unacceptable.¹²

17 Johnson Utilities' rebuttal testimony is due on March 6, 2009. The data requests
18 were specifically targeted to obtain information necessary to rebut the Direct Testimony
19 of David Ashton that was filed February 3, 2009. Johnson Utilities must have SFG's
20 responses to the data requests before it can complete its rebuttal testimony. Thus, the
21 Company was forced to file a Motion to Compel Discovery on February 19, 2009.

22 With regard to SFG's allegation in the Notice that the data requests are irrelevant,
23 SFG has not raised any objections to any of the data requests—on relevancy grounds or
24 any other grounds. With regard to its allegation that Johnson Utilities has demanded
25 immediate responses, the Company notes that it issued the second set only three days after

26 _____
¹² Notice at pages 10-11.

1 receiving Mr. Ashton's Direct Testimony. SFG elected to intervene in this case, and was
2 granted intervention on June 23, 2008. SFG knows the procedural schedule, and as a
3 party to the Rate Case Docket, must adhere to the established schedule.

4 Finally, it is disingenuous for SFG to argue that Johnson Utilities' data requests can
5 be asked on cross-examination of Mr. Ashton. If that is true, then what data requests can't
6 be asked on cross-examination? Data requests are a discovery staple in rate cases, and the
7 purpose of pre-filed testimony and rebuttal testimony is to narrow the issues for hearing
8 and to prevent surprise. There is no basis for excusing SFG from providing responses to
9 Johnson Utilities' data requests.

10 **10. SFG'S "SIGNIFICANT DOCUMENT" LIST.**

11 SFG asserts that it has been unable to timely respond to Johnson Utilities data
12 requests because SFG was "required" to complete the following significant documents:
13 Direct Testimony of David Ashton; Fourth Rate Case Data Requests to Utility; Motion for
14 Date Certain; E-mail to Mr. Crockett concerning Utility's incomplete data responses;
15 Second Motion to Compel (Complaint Docket); Letter to Mr. Crockett objecting to
16 proposed deposition dates; Objections to inappropriate data request; Fifth Rate Case Data
17 Requests to Utility; Emergency Motion to Prohibit Inappropriate Contact; Motion for
18 Leave to file Supplemental testimony; Supplemental Testimony of David Ashton; E-mail
19 to Mr. Crockett concerning Utility's incomplete data responses; Notice of Inappropriate
20 Discovery and Litigation Tactics.¹³ Yet, a review of SFG's list shows that most of
21 documents that pertain to the Rate Case Docket were the responsibility of SFG as a party
22 to a rate case and were not caused by Johnson Utilities. SFG has failed to adequately
23 explain why it cannot provide responses to Johnson Utilities data requests which are
24 necessary for the Company to complete its rebuttal testimony which is due in eight days.

25
26 ¹³ Notice at page 9, lines 9-24.

1 **11. SFG'S PLANNED RESPONSE DATES TO JOHNSON UTILITIES'**
2 **DATA REQUESTS IS UNACCEPTABLE.**

3 A.A.C. R14-3-105 states that an application for intervention shall not be granted
4 “where by doing so the issues presented will be unduly broadened, except upon leave of
5 the Commission first had and received.” SFG has deliberately and improperly broadened
6 the issues to be addressed in the Rate Case Docket by interjecting the Complaint Docket.
7 As a party to the case, SFG must comply with the procedural schedule imposed by the
8 Commission. SFG's refusal to provide responses to Johnson Utilities' data requests in a
9 timely fashion so that the Company can prepare its rebuttal testimony is unacceptable, and
10 SFG should be ordered to provide the responses immediately.

11 **12. CONCLUSION.**

12 For the reasons stated herein, Johnson Utilities and its legal counsel submit that
13 their conduct in this Rate Case Docket has at all times been reasonable, appropriate and in
14 good faith. SFG has failed to show otherwise. Because SFG's assertions have been
15 shown to be without any merit, and because its self-serving Notice specifically states that
16 SFG is not asking the Commission to take any specific action with regard to Johnson
17 Utilities' alleged discovery abuse and litigation tactics, the Notice is an improper filing
18 that should be stricken.

19 RESPECTFULLY SUBMITTED this 26th of February, 2009.

20 SNELL & WILMER L.L.P.

21 By 
22 Jeffrey W. Crockett
23 Bradley S. Carroll
24 One Arizona Center
25 400 E. Van Buren
26 Phoenix, AZ 85004-2202
 Attorneys for Johnson Utilities, LLC

1 ORIGINAL and 13 copies filed this
2 26th day of February, 2009, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85004

7 COPIES of the foregoing hand-delivered this
8 26th day of February, 2009, to:

9 Teena Wolfe, Administrative Law Judge
10 Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 W. Washington Street
13 Phoenix, Arizona 85007

14 Ayesha Vohra, Staff Attorney
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington Street
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19 Ernest Johnson, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 W. Washington Street
23 Phoenix, Arizona 85007

24 COPIES of the foregoing sent via e-mail and
25 U.S. mail this 26th day of February, 2009, to:

26 Craig A. Marks
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9548245.5

ATTACHMENT A

SWING FIRST GOLF'S NOVEMBER 21, 2008, MOTION TO COMPEL—RESULTS

DATA REQUEST	RULING	PREVAILING PARTY	
1.3	JU must provide effluent quantity delivered by month by customer without disclosing name of customer	SFG	
1.5	SFG should send follow-up data request to JU		JU
1.6	No additional response required by JU		JU
1.7	No additional response required by JU		JU
2.6	JU must provide WQARF taxes collected by year for 2005 and 2006	SFG	
3.1	SFG should send follow-up data request to JU with specific questions		JU
3.2	No additional response required by JU		JU
3.5	No additional response required by JU		JU
3.6	No additional response required by JU		JU
3.7	No additional response required by JU		JU
3.8	No additional response required by JU		JU
3.9	No additional response required by JU		JU
3.10	JU must provide case number and filing date	SFG	JU
3.15	No additional response required by JU		JU
3.16	JU must provide information responsive to the data request which is not available in a public docket	SFG	JU

ATTACHMENT B

Docket No. WS-02987A-08-0180
Swing First Golf LLC
First Data Requests to Johnson Utilities LLC

(RATE CASE)

- 1.1. For each month during the period of 2005 to the present, please provide by treatment facility the amount of treated effluent generated within Utility's Certificate of Convenience and Necessity ("CC&N").

Response: The information requested is reported by Johnson Utilities on "Self Monitoring Reports" filed with ADEQ on a quarterly basis for each water reclamation plant operated by Johnson Utilities. This information is a matter of public record and can be readily obtained from ADEQ.

Prepared by: Brian Tompsett, Executive Vice President
Johnson Utilities, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254

ATTACHMENT C

Docket No. WS-02987A-08-0180
Swing First Golf LLC
First Data Requests to Johnson Utilities LLC

(RATE CASE)

REVISED RESPONSE TO 1.1 (10-17-2008)

- 1.1 For each month during the period of 2005 to the present, please provide by treatment facility the amount of treated effluent generated within Utility's Certificate of Convenience and Necessity ("CC&N").

Objection: The information requested in this data request is reported by Johnson Utilities on "Self Monitoring Report Forms" filed with ADEQ on a quarterly basis for each water reclamation plant operated by Johnson Utilities. This information is a matter of public record and can be readily obtained from ADEQ. In addition, information regarding effluent generated at water reclamation plants which do not and cannot supply Swing First Golf are not relevant to Swing First Golf's interests in this rate case proceeding.

Response: Attached to this response are Self Monitoring Report Forms for Johnson Utilities' Santan Water Reclamation Plant for each quarter during the test year 2007. Johnson Utilities is providing these documents without waiving the objection set forth above.

Prepared by: Brian Tompsett, Executive Vice President
Johnson Utilities, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254

ATTACHMENT D

Crockett, Jeff

From: Crockett, Jeff
Sent: Monday, February 09, 2009 1:12 PM
To: 'Craig Marks'
Cc: Carroll, Bradley
Subject: RE: Disappointed in You

Craig:

The self monitoring report forms ("SMRFs") for Johnson Utilities were provided to you in response to Swing First Data Requests 1.1 and 1.10. Please re-read your data requests. Specifically, your DR 1.10 asked for copies of "reports provided during the period of 2005 to the present by Utility to the Arizona Department of Environmental Quality." That is what we provided. With regard to DR 1.1, you now object because we did not "pull the relevant data" from the SMRFs and because the "balance of the response was irrelevant." First, if we had pulled selected pages of the SMRFs and provided those to you in response to DR 1.1, you would no doubt have raised that as an additional issue in your November 21, 2008, motion to compel. Second, the SMRFs were directly responsive to both DR 1.1 and DR 1.10, and therefore, relevant. Third, it is not our responsibility to attempt to surmise what you may find "relevant" or "irrelevant." Thus, we are mystified by your allegation that we have engaged in some type of "litigation tactics." Our objective has been to provide your client with information responsive to his data requests, except in those instances where we have asserted what we believe to be good-faith objections in writing.

We are puzzled why you raise, yet again, the timing of our responses your data requests. In our initial response to DR 1.1 on September 18, 2008, we stated that the information you requested was publicly available from ADEQ on the SMRFs. Thus, the initial answer was responsive. Moreover, I note that Judge Wolfe recently ruled on Swing First Golf's motion to compel that SFG must obtain information that is publicly available from the public source. Nevertheless, Johnson Utilities provided you with copies of the SMRFs in an effort to work cooperatively with SFG in discovery, as we discussed. The SMRFs were provided to you under cover letter dated October 17, 2008. It appears based on your e-mail Friday that you did not have a chance to look at the response and the SMRFs until almost four months after you received them.

Finally, I assure you that Brad Carroll and I review the data responses and attachments before they leave this office. Our record in this case and during our 35 years of combined practice before the Arizona Corporation Commission is one of professionalism and candor. Further, we do not now nor have we ever engaged in any type of so-called "litigation tactics" which are unprofessional or which deviate in any way from our ethical obligations. We recognize that this is a difficult and contentious case, and that the first reaction may be to ascribe improper motives and/or tactics where, in reality, none exist. If you would like to further discuss this matter, please do not hesitate to call us.

Jeff Crockett
Brad Carroll

Snell Wilmer
DENVER LAS VEGAS ORANGE COUNTY PHOENIX SALT LAKE CITY TUCSON

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2/26/2009

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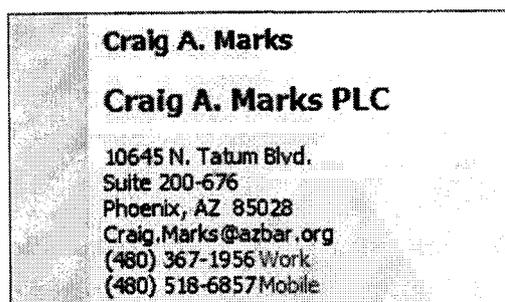
From: Craig Marks [mailto:craig.marks@azbar.org]
Sent: Friday, February 06, 2009 3:39 PM
To: Crockett, Jeff; Carroll, Bradley
Subject: Disappointed in You

Jeff and Brad,

* I was going through Johnson Utilities' Revised Response to Swing First's DR 1-1 this morning. The attachment provided by Mr. Tompsett was approximately 220 pages long, with the relevant information actually contained on just four pages. In less time than it took to copy this huge non-responsive attachment, Utility could have pulled the relevant data off these four pages (quarterly reports of average daily flows) and included it directly in the response. Arguably, the 12 daily reports of effluent flows were also responsive. However, the balance of the response was irrelevant. Further, this revised response only came after I challenged the first attempt to provide me nothing at all.

Given my past good relations with both of you, I will chalk this up to your client. Perhaps you didn't review the response closely enough. However, I don't appreciate these types of litigation tactics. If they reoccur, I will not hesitate to take whatever remedies are available to me.

Craig



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ATTACHMENT E

Docket No. WS-02987A-08-0180
Swing First Golf LLC
First Data Requests to Johnson Utilities LLC

(RATE CASE)

REVISED RESPONSE TO 1.10 (10-17-2008)

- 1.10 Please provide copies of all reports provided during the period of 2005 to the present by Utility to the Arizona Department of Environmental Quality ("ADEQ") or the Arizona Department of Water Resources ("ADWR") concerning the quality or quantity of treated effluent produced by the utility.

Objection: Copies of reports filed by Johnson Utilities with the Arizona Department of Environmental Quality ("ADEQ") and the Arizona Department of Water Resources ("ADWR") are public records which may readily be obtained from these agencies. In addition, information concerning the quality or quantity of treated effluent produced at water reclamation plants which do not and cannot supply Swing First Golf are not relevant to Swing First Golf's interests in this rate case proceeding.

Response: Attached to the revised response to Swing First Golf Data Request 1.1 above are copies of Self Monitoring Report Forms for Johnson Utilities' Santan Water Reclamation Plant ("Santan WRP") for each quarter during the test year 2007 as filed with ADEQ. Attached to this response is a copy of Schedule F-2 from Johnson Utilities 2007 Annual Report to ADWR showing the quantity of effluent delivered from Johnson Utilities' Santan WRP to Swing First Golf in 2007. Johnson Utilities is providing these documents without waiving the objection set forth above.

Prepared by: Brian Tompsett, Executive Vice President
Johnson Utilities, LLC
5230 East Shea Boulevard
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